

#### § 1469.4

#### 7 CFR Ch. XIV (1–1–07 Edition)

condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Stewardship payment* means the CSP base payment component of the payment as described in § 1469.23(a).

*Structural practice* means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

*Technical assistance* means the activities as defined in 7 CFR part 1466.

*Technical Service Provider* means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

*Tenant* means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds therefrom.

*Tier* means one of the three levels of participation in CSP.

*Water quality* means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other

concerns identified by state water quality agencies.

*Watershed or regional resource conservation plan* means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

*Wetlands Reserve Program (WRP)* means the Commodity Credit Corporation program administered by NRCS pursuant to 16 U.S.C. 3837–3837f.

#### § 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

#### § 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) *Applicants may submit only one application for each sign-up.* Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.

(c) *Eligible applicants.* To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner;

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations);

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with §1469.7(a); and

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to information related to eligibility criteria in the sign-up notice, and information to verify the applicant's status as a beginning or a limited resource farmer or rancher.

(d) Eligible land:

(1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

(ii) Private non-industrial forested land that is an incidental part of the agricultural operation;

(iii) Agricultural land that is Tribal, allotted, or Indian trust land;

(iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, turn rows, intermingled small wet areas or riparian areas); or

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other

such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

(2) The following land is not eligible for enrollment in CSP:

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

(iii) Land enrolled in the Grassland Reserve Program;

(iv) Public land including land owned by a Federal, State or local unit of government;

(v) Land referred to in paragraphs (d)(2)(i), (ii) (iii) and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets the minimum level of treatment on the eligible land and may be described in the conservation stewardship plan.

(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (d)(1)(iv) of this section, and other lands, identified in paragraph (d)(1)(v) of this section under the control of the applicant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) *Conservation standards*—(1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the eligible land uses within the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all eligible land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section for all eligible land uses on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in §1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive.

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salin-

ity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water.

(iii) The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides for:

- (i) A forage-animal balance;
- (ii) Proper livestock distribution;
- (iii) Timing of use; and
- (iv) Managing livestock access to water courses.

(4) The minimum level of treatment for Tier III:

(i) The minimum level of treatment for Tier III is having a fully implemented resource management system that meets the quality criteria for the local NRCS FOTG for all applicable resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 using a general or species specific habitat assessment guide; and

(ii) All riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface

runoff; reduce nutrients and other pollutants in shallow subsurface water flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods.

(5) In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

**§ 1469.6 Enrollment criteria and selection process.**

(a) *Selection and funding of priority watersheds.* (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

- (i) Potential of surface and ground water quality to degradation;
- (ii) Potential of soil to degradation;
- (iii) Potential of grazing land to degradation;
- (iv) State or national conservation and environmental issues *e.g.* location of air non-attainment zones or important wildlife/fisheries habitat; and
- (v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) *Enrollment categories.* The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories may be defined by criteria related to resource

concerns and levels of historic conservation treatment, including the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

- (i) Willingness of the applicant to participate in local conservation enhancement activities;
- (ii) Targeting program participation for Limited Resource Producers;
- (iii) Targeting program participation to water quality priority areas for nutrient or pest management;
- (iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and
- (v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) *Sign-up process.* (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

- (i) Any additional program eligibility criteria that are not listed in § 1469.5;
- (ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;
- (iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in § 1469.21;